

Remarks:

*Regarding the "double-patenting" rejection of the claims in view of copending US Serial No. 10/572804:*

The applicant traversed the 'double patenting' rejection of the instant application over US Ser.No. 10/572804, as being inappropriate and premature. As the latter application has not been allowed to grant, thus it is believed that the Examiner's issuance of this grounds of rejection is also premature as the final scope of the allowable claims have not been determined in that application, nor has the scope of allowable claims in the instant application been established. Thus, until such time it is believed that the basis of the 'double patenting' rejection of the instant application is premature.

The Examiner is invited to reinstate this rejection at such later time that allowable claims have been indicated in the present application, if such allowable claims would be deemed overlapping in scope to those of any US Patent issued from US Ser.No.10/572804.

*Regarding the rejection of claims 1, 5-8 under 35 USC 1029b) in view of Abramov et al (Zhuranl Obshchei Khimii (1952), 22, 1450-1457) (hereinafter "Abramov"):*

The applicant respectfully traverses the present rejection in view of the Abramov document; Abramov fails to indicate any organoleptic properties of his indicated compounds, or their utility as fragancing materials.

The applicant also traverses the Examiner's contention that "a fragancing material" and "a fragrance application" should not be given patentable weight. The Federal Courts have held otherwise on plural occasions. There are several court decisions which have held otherwise. In *Catalina Mktg. Int'l v. Coolsavings.com, Inc.*, 289 F.3d at 808-09, 62 USPQ2d at 1785. the Court stated that "Clear reliance on the preamble during prosecution to distinguish the claimed invention from the prior art transforms the preamble into a claim limitation because such reliance indicates use of the preamble to define, in part, the claimed invention. Without such reliance, however, a preamble generally is not limiting when the claim body describes a structurally complete invention

such that deletion of the preamble phrase does not affect the structure or steps of the claimed invention." Consequently, "preamble language merely extolling benefits or features of the claimed invention does not limit the claim scope without clear reliance on those benefits or features as patentably significant.". Similarly in *Poly-America LP v. GSE Lining Tech. Inc.*, 383 F.3d 1303, 1310, 72 USPQ2d 1685, 1689 (Fed. Cir. 2004), the Court stated that "a '[r]eview of the entirety of the '047 patent reveals that the preamble language relating to 'blown-film' does not state a purpose or an intended use of the invention, but rather discloses a fundamental characteristic of the claimed invention that is properly construed as a limitation of the claim.."

Here in the applicant's claims, the terms "a fragrancng material" and "a fragrance application" disclose key technical features, including organoleptic properties, of the subject matter of the claims and thus should be afforded patentable weight. Given such, they also not anticipated by Abramov.

In view of the foregoing, reconsideration of the propriety of the outstanding grounds of rejection and indication of allowable subject matter in the presently amended claims is solicited.

#### **PETITION FOR A ONE-MONTH EXTENSION OF TIME**

The applicants respectfully petition for a one-month extension of time in order to permit for the timely entry of this response. The Commissioner is hereby authorized to charge the fee to Deposit Account No. 14-1263 with respect to this petition.

#### **CONDITIONAL AUTHORIZATION FOR FEES**

Should any further fee be required by the Commissioner in order to permit the timely entry of this paper, the Commissioner is authorized to charge any such fee to Deposit Account No. 14-1263.

Should the Examiner in charge of this application believe that telephonic communication with the undersigned representative would meaningfully advance the prosecution of this application towards allowance, the Examiner is invited to contact the undersigned at their earliest convenience.

Respectfully Submitted;



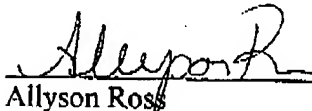
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25 January 2008  
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CERTIFICATE OF TELEFAX TRANSMISSION UNDER 37 CFR 1.8

I certify that this document, and any attachments thereto, addressed to the:  
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Allyson Ross

25 January 2008  
Date

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